

*State of New Mexico*  
**ENVIRONMENTAL IMPROVEMENT BOARD**  
*Harold Runnels Building, N-2150*  
*1190 St. Francis Drive, P. O. Box 5469*  
*Santa Fe, New Mexico 87502*

**Environmental Improvement Board Meeting**  
**June 21, 2010**  
**10:00 a.m.**  
**New Mexico State Capitol Room 317**  
**490 Old Santa Fe Trail**  
**Santa Fe, New Mexico 87501**

**Members Present:**

Gay Dillingham, Chair  
Gregory Green, Vice-Chair  
Frank Simms, Secretary  
James Gollin, Member  
John Horning, Member  
Leland Gould, Member

**Members Absent:**

Abbas Ghassemi, Member

**Others Present:**

**Please see attached meeting sign-in sheets**

Sandra Ely, NMED/EPD  
Stephen Vigil, Asst. AG Board Counsel

Jim Norton, NMED/EPD

The Chair called the meeting to order at 10:05 a.m.

**Item 1. Roll Call**

Roll was called and it was noted that a quorum was present.

Chair Dillingham welcomed the newest Board member, Leland Gould.

**Item 2. Approval of Agenda**

Mr. Vigil noted that two of the issues to be discussed in the executive session, *Leavell, et al., v. EIB* and *EIB v. Shoobridge*, listed as part of Agenda Item 9 had been resolved and should be removed from that item.

There was a brief discussion regarding agenda scheduling.

**Action:** Mr. Simms moved Board approval of the agenda. Mr. Gould seconded. The motion passed unanimously.

**Item 3.** Approval of April 5, 2010 meeting minutes.

**Action:** Mr. Green moved Board approval of the April 5, 2010 minutes. Mr. Gollin seconded. The motion passed unanimously.

**Item 4.** Public Comment

None.

**Item 5.** Board appointment of a hearing officer in re: EIB 10-02 (A) Helena Chemical Petition for Hearing in Denial of NOI No. 3035 M1-R2.

The Chair discussed the Helena matter and the schedule for that case and asked how many members thought they would be able to attend the four day hearing in Santa Fe and the day in Mesquite. Additionally, she noted that any member who might miss a hearing day, or days, would need to read the transcript for days missed in order to participate in deliberations and voting. After discussion, it appeared that there would be a quorum for the hearing.

Mr. Green volunteered to act as hearing officer in this case.

**Item 6.** Request for Hearing in re: the Matter of Proposed Revisions to 20.7.10 NMAC, Drinking Water. Regarding the adoption of 40 CFR Part 141, EIB 10-03 (R). Bill Grantham, NMED/OGC; Angela Cross, NMED/DWB.

Mr. Grantham introduced Angela Cross, a Civil Engineer in the Department's Drinking Water Bureau. He went on to explain the need for the hearing and the related federal rules involved. He also noted that it is anticipated that the hearing will not be controversial or lengthy. Additionally, he stated that the publication time constraints for noticing the hearing dictated that the hearing be held in September after the 15<sup>th</sup> or, alternatively, at the Board's October 4<sup>th</sup> meeting.

The Chair noted that while no September Board meeting date had been set, there had been discussions regarding holding the Department's greenhouse gas cap and trade hearing on September 20, 2010. She asked Mr. Grantham if he was amenable to having the hearing set immediately prior to the convening of the NMED greenhouse gas case on September 20<sup>th</sup>. He indicated that would be acceptable to his client. There was a brief scheduling discussion.

Mr. Horning volunteered to be hearing officer in this matter with Ms. Dillingham to be his back-up in the event he was unable fulfill his duties.

It was agreed among the parties that the hearing requested would be set on one of two dates, September 20<sup>th</sup> prior to the NMED greenhouse gas hearing convening or, at the outset of the October 4<sup>th</sup> meeting. Chair Dillingham assured Mr. Grantham that the Board would set the hearing date prior to the end of today's meeting.

**Item 7. Board update in re: State climate change activities. Jim Norton, NMED/EPD; Sandra Ely, NMED/EPD.**

Mr. Norton extended his apology to the Board prior to setting out a schedule of five hearings proposed by the Department commencing September, 2010. He set out a brief review of the five proposals.

A lengthy discussion relating to scheduling the proposed hearings and the matters at issue ensued among Board members, Mr. Norton and Ms. Ely.

**Item 8. Request for Hearing in re: the Matter of Proposed New Regulations, 20.2.350 NMAC, Greenhouse Gas Cap and Trade Provisions, EIB 10-04 (R). Eric Ames, NMED/OGC.**

Mr. Ames requested that the Board set the hearing in EIB 10-04 (R) on September 20, 2010, and that a hearing officer be designated. He further noted that the Department proposes that the hearing continue from day-to-day until complete. He also requested that the Board adopt the Department's proposed filing schedule. Mr. Ames estimates the hearing will last for two weeks.

Mr. Green suggested that the Department and NEE explore whether these two hearings could be combined in whole or in part.

A lengthy discussion ensued among interested parties, including proponents and opponents, relating to the Board setting a hearing. There was also discussion about Mr. Green's suggestion as well as a wide variety of proposals relating to procedures and scheduling to be implemented with respect to hearings on both petitions.

Following discussion, at the request of the Chair, Mr. Fredericks and Mr. Ames briefly contrasted the petitions filed with the Board by their respective clients.

General and scheduling discussions resumed.

Following the discussion relating to setting the NMED hearing and discussion of the NEE petition, Chair Dillingham requested that Felicia Orth, Hearing Officer in the NEE case, discuss pertinent issues, including scheduling, with the Board. Ms. Orth noted that she would need Board direction with respect to the scheduling issues. She indicated that she would work diligently with all parties in an effort to streamline both hearings. She also noted that it would be critical for members of the Board to be present at the hearings.

There was Board discussion with Mr. Vigil regarding the two hearings and the reasons for those hearings to be held separately.

Additional Board discussions resumed with various parties relating to the impact of the proposed rule changes.

**Action: Mr. Green moved that the Board accept NMED's Motion to Set Schedule and Assign Hearing Officer in EIB 10-04 (R) the Greenhouse Gas Cap and Trade matter and further, to designate Ms. Orth as Hearing Officer. Mr. Simms seconded.**

The Chair stated that the Board would recess for fifteen minutes in order to review the Department's Motion to Set Schedule and Assign Hearing Officer.

Following the recess the Chair proposed a friendly amendment to Mr. Green's motion, suggesting the revision of Paragraph c. to read "The Department and all other interested parties shall submit notices of intent to present rebuttal technical testimony, including full written testimony and exhibits, on August 30, 2010."

There was additional Board discussion relating to the motion.

**Roll Call Vote:**

<b>Mr. Gould</b>	<b>no</b>
<b>Mr. Gollin</b>	<b>yes</b>
<b>Mr. Simms</b>	<b>yes</b>
<b>Mr. Horning</b>	<b>yes</b>
<b>Mr. Green</b>	<b>yes</b>
<b>Ms. Dillingham</b>	<b>yes</b>

**The motion passed, five votes in the affirmative; one vote in the negative.**

**Item 9. Executive Session pursuant to NMSA 1978 §10-15-1(H)(7) (meetings subject to the attorney-client privilege pertaining to threatened or pending litigation).**

- ***Leavell, et. al. v. EIB*, D-0506-CV-2010-00050**
- ***EIB v. Shoobridge*, NMSC No. 32,409**
- ***NMED v. EIB*, COA No. 30,260**

Mr. Vigil pointed out that both the *Leavell* and the *Shoobridge* cases were no longer at issue and consequently, would be discussed in the Board's open session. However, the *NMED v. EIB* case would be discussed in executive session.

There was discussion regarding the current agenda scheduling.

**Action:** Mr. Green moved rescinding the prior approval of the Agenda and changing the order in which Items 9 and 10 are heard and that Board deal with Item 10, the re-setting of the NEE greenhouse gas petition, EIB 08-19 (R) before going into executive session to be briefed by Mr. Vigil on *NMED v. EIB*, COA No. 30,260. Mr. Horning seconded.

There was discussion regarding changing the agenda at this juncture.

**Roll Call Vote:**

Mr. Gollin	yes
Mr. Simms	yes
Mr. Gould	yes
Mr. Horning	yes
Mr. Green	yes
Ms. Dillingham	no

The motion passed, five votes in the affirmative; one vote in the negative.

**Please See Continuation of Item 9 Following Item 10.**

**Item 10. Status update and scheduling of EIB 08-19 (R), on the Adoption of New Regulations and Amendment of Various Sections of 20.2.1, 20.2.2, 20.2.70 and 20.2.72 NMAC, to Create a Statewide Cap on Greenhouse Gas Emissions and Promulgating Other Requirements. Bruce Frederick, Esq., NMELC/NEE.**

There was Board discussion with Mr. Frederick and Mr. Vigil relating to new scheduling issues with respect to re-setting the hearing pursuant to NEE's Emergency Motion to Lift Stay and Resume Hearing Pursuant to Modified Schedule and the Order granting that motion.

At the request of the Chair, Ms. Orth, Hearing Officer in this case, noted several issues relating to the resumption of the hearing and possible scheduling difficulties in this case.

Board discussion regarding scheduling continued with NEE's counsel, Mr. Frederick and Ms. Orth.

**Action:** Mr. Green moved that the Board accept NEE's requested schedule relating to the resumption of the hearing in EIB 08-19 (R), NEE's Petition for Adoption of New Regulations, etc., commencing August 16, 2010, and continuing as needed, but no longer than ten days total. Additionally, he moved that the Board

**vacate the earlier pre-hearing order in this matter, designate Ms. Orth as Hearing Officer and delegate to her the authority to handle future pre-hearing issues and orders.**

Mr. Horning offered a friendly amendment to Mr. Green's motion, limiting the hearing to five days, August 16<sup>th</sup> through August 20<sup>th</sup>. Mr. Green accepted the friendly amendment.

**Ms. Dillingham seconded.**

Several interested parties indicated their objections to the proposed schedule.

**Roll Call Vote:**

<b>Mr. Simms</b>	<b>yes</b>
<b>Mr. Gollin</b>	<b>yes</b>
<b>Mr. Green</b>	<b>yes</b>
<b>Mr. Gould</b>	<b>no</b>
<b>Mr. Horning</b>	<b>yes</b>
<b>Ms. Dillingham</b>	<b>yes</b>

**The motion passed, five votes in the affirmative; one vote in the negative.**

**Item 9. Continuation of earlier discussion regarding *Leavell, et. al. v. EIB*, D-0506-CV-2010-00050 and *EIB v. Shoobridge*, NMSC No. 32,409.**

Mr. Vigil noted for the Board's information, the disposition of these two cases, one in district court and the other before the supreme court, as indicated above. These two cases no longer have any relevance having been disposed of by the courts.

**Action: Mr. Green moved that the Board go into executive session to discuss Court of Appeals Case 30,260 with discussion limited to that case only. Ms. Dillingham seconded**

**Roll Call Vote:**

<b>Mr. Green</b>	<b>yes</b>
<b>Mr. Gollin</b>	<b>yes</b>
<b>Mr. Simms</b>	<b>yes</b>
<b>Mr. Horning</b>	<b>yes</b>
<b>Mr. Gould</b>	<b>yes</b>
<b>Ms. Dillingham</b>	<b>yes</b>

**The motion passed unanimously.**

**Action:** While in executive session the Board voted unanimously to end the executive session and return to the open meeting.

The Chair reconvened the open meeting and stated that while in executive session the only matter discussed was *NMED v. EIB*, COA No. 30,260.

**Item 11. Other business**

There was a brief discussion regarding availability of transcripts to those members unable to attend a Board hearing for a day or days.

**Item 12. Next Meeting:** July 6-9, 2010, 10:00 a.m., State Capitol Room 317, 490 Old Santa Fe Trail, Santa Fe, New Mexico 87501; 12:00 p.m. July 21, 2010, Our Lady of Perpetual Help, 125 Mesquite Drive, Mesquite, New Mexico.

**Item 13. Adjournment**

**Action:** Mr. Green moved that the Board adjourn. Mr. Simms seconded. The motion passed unanimously.

  
Gay Dillingham, Board Chair